

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT JOSEPH RODRIGUEZ,

Defendant-Appellant.

UNPUBLISHED
February 11, 2003

No. 235102
Eaton Circuit Court
LC No. 01-020019-FH

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of domestic assault (third offense), MCL 750.81(3), and to being a third felony offender, MCL 769.11. He was sentenced to serve two and one-half to eight years in prison. He now appeals and we affirm.

Defendant's conviction arises out of an incident that occurred in the apartment that he shared with the victim, his girlfriend, and their children. According to the victim, the two argued and the argument escalated into defendant assaulting her. Defendant denies assaulting the victim, arguing that the victim fabricated the assault in retaliation for defendant's plans to leave her. The jury convicted defendant of simple assault (domestic), but acquitted him of a second charge of assault with intent to do great bodily harm less than murder.

Defendant first argues that the trial court erred in admitting certain testimony by Dustin Waid. Officer Waid testified that he had observed an interrogation of defendant by state police Trooper Jeff Lure. According to Officer Waid, Trooper Lure had shown defendant photographs taken of the victim's injuries, though Officer Waid could only see the two photographs on top. During an offer of proof on defendant's objection to Officer Waid's testimony, Officer Waid testified to the following exchange between defendant and Trooper Lure:

Q [by the prosecutor] And did the defendant make any statement during that interview?

A Yes.

Q What were those statements?

A One that the trooper asked him if he had caused any injuries to the person involved, and he said not in that time frame. And he kept reiterating that through the questioning.

Q Did the trooper confront him with any evidence of injuries?

A Yes. He laid out the photographs.

Q And what did he ask him?

A He asked him if he had caused these injuries.

Q His response was?

A Not in that time frame.

The time frame referred to was between November 24 and December 4, 2000.

On appeal, defendant's only argument is that the testimony should have been excluded under MRE 403 as being more prejudicial than probative, as well as being inadmissible under MRE 404(a) and (b). However, defendant objected at trial based upon hearsay (MRE 802) and relevancy (MRE 402). Because defendant did not object at trial on the basis he now argues on appeal, this issue is not preserved for appellate review. *People v Grant*, 445 Mich 535, 545-546; 520 NW2d 123 (1994).

Affirmed.

/s/ David H. Sawyer

/s/ Kathleen Jansen

/s/ Pat M. Donofrio